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10 EDWIN HANNON and BRANDIE
11 HANNON,
12 Plaintiffs,
13 v.
14 WELLS FARGO BANK, N.A.,
15 Defendant.

Case No. 14-CV-05381-LHK

**ORDER GRANTING MOTION TO
DISMISS**

Re: Dkt. No. 21

16 Plaintiffs Edwin Hannon and Brandie Hannon (collectively, “Plaintiffs”) bring this action
17 against Wells Fargo Bank, N.A. (“Wells Fargo”) alleging state law claims for violations of
18 California’s Unfair Competition Law (“UCL”), California Business and Professions Code
19 §§ 17200, *et seq.*, fraud, breach of contract, and breach of the implied covenant of good faith and
20 fair dealing. Second Amended Complaint (“SAC”), ECF No. 20, ¶¶ 39–90. Before the Court is
21 Wells Fargo’s motion to dismiss the SAC. (“Mot.”), ECF No. 21. Plaintiffs opposed the motion,
22 (“Opp’n”), ECF No. 23, and Wells Fargo filed a reply, (“Reply”), ECF No. 25. Having considered
23 the parties’ submissions, the relevant law, and the record in this case, the Court GRANTS Wells
24 Fargo’s motion, for the reasons stated below. The case management conference set for September
25 9, 2015, at 2:00 p.m. is hereby VACATED.

1 **I. BACKGROUND**2 **A. Factual Background¹**

3 On October 9, 2007, Plaintiffs took out a \$620,000 loan from World Savings, a
4 predecessor entity of Wells Fargo,² secured by a deed of trust recorded against real property
5 located at 2479 Tuckahoe Terrace, Royal Oaks, CA (“the property”). ECF No. 22-1, Ex. A.

6 **1. Foreclosure Timeline**

7 In 2009, Plaintiffs experienced financial hardship and felt that if their financial situation
8 did not change, “they might not be able to afford their monthly [loan] payments.” SAC, at 2.
9 Sometime in early 2009, Plaintiffs defaulted on their mortgage. *Id.* ¶ 14. Following Plaintiffs’
10 default, Regional Trustee Services Corporation recorded a notice of default on September 8, 2010.
11 ECF No. 22-1, Ex. F. By that time, Plaintiffs had accrued \$68,053.09 in overdue payments. *Id.*
12 After Plaintiffs failed to cure the delinquency, a notice of trustee’s sale was recorded on December
13 9, 2010, setting a sale date of December 30, 2010. ECF No. 22-1, Ex. H.

14 The property was eventually sold at a trustee’s sale on June 30, 2011, and several days
15 later on July 5, 2011 a trustee’s deed upon sale was recorded, indicating that Wells Fargo had

18 ¹ A court generally may not look beyond the four corners of a complaint in ruling on a Rule
19 12(b)(6) motion, with the exception of documents incorporated into the complaint by reference,
20 and any relevant matters subject to judicial notice. *See Swartz v. KPMG LLP*, 476 F.3d 756, 763
21 (9th Cir. 2007); *Lee v. City of L.A.*, 250 F.3d 668, 688–89 (9th Cir. 2001), overruled on other
22 grounds by *Galbraith v. Cnty. of Santa Clara*, 307 F.3d 1119 (9th Cir. 2002). A court may take
23 judicial notice of matters that are either: (1) generally known within the trial court’s territorial
24 jurisdiction; or (2) capable of accurate and ready determination by resort to sources whose
25 accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b). Proper subjects of judicial notice
26 when ruling on a motion to dismiss include court documents already in the public record and
27 documents filed in other courts. *See Holder v. Holder*, 305 F.3d 854, 866 (9th Cir. 2002). Here,
28 Wells Fargo requests judicial notice of nineteen documents in connection with its motion to
dismiss. ECF No. 22. Each document is judicially noticeable as either capable of accurate and
ready determination by resort to sources whose accuracy cannot reasonably be questioned, *see*
Fed. R. Evid. 201(b), or is a court document already in the public record or a document filed in
another court, *See Holder*, 305 F.3d at 866. Additionally, Plaintiffs do not dispute that these
documents are properly subject to judicial notice, and so the Court GRANTS Wells Fargo’s
request for judicial notice.

2 ² In 2008, World Savings changed its name to Wachovia Mortgage, FSB. ECF No. 22-1, Exs. B–
D. In November 2009, Wachovia Mortgage changed its name to Wells Fargo Bank Southwest,
N.A., and merged into Wells Fargo Bank, N.A. *Id.*, Ex. E.

1 purchased the property. ECF No. 22-1, Ex I.³

2 **2. Plaintiffs' Allegations**

3 Plaintiffs allege that in January 2009, before Plaintiffs had defaulted on their mortgage,
4 Plaintiffs contacted Wells Fargo about a possible loan modification, and that on January 8, 2009
5 an unspecified Wells Fargo representative interviewed Plaintiffs. SAC ¶ 14. According to
6 Plaintiffs, this Wells Fargo representative informed Plaintiffs that under the Home Affordable
7 Mortgage Program (“HAMP”) guidelines Plaintiffs “could not be considered for a modification
8 unless and until they went into default and remained in default for three months.” *Id.* The SAC
9 alleges that the Wells Fargo representative told Plaintiffs that if they were to default, “they would
10 qualify for a loan modification under HAMP or under one of Wells Fargo’s internal loan
11 modification programs.” *Id.* The Wells Fargo representative also allegedly informed Plaintiffs that
12 their default would not be reported to any credit-reporting agency. *Id.* According to Plaintiffs,
13 these representations were false: debtors need not be in default to seek modification under HAMP,
14 Wells Fargo denied Plaintiffs’ applications for a loan modification, and Wells Fargo reported
15 Plaintiffs’ default to credit-reporting agencies. *Id.* at 2.

16 Plaintiffs state that in reliance on these representations, Plaintiffs stopped making monthly
17 mortgage payments and went into default. *Id.* ¶ 14. Shortly after Plaintiffs defaulted, a different
18 unnamed Wells Fargo loan modification representative interviewed Plaintiffs about their income
19 and assets. *Id.* According to the SAC, this second representative informed Plaintiffs that they
20 qualified for a loan modification and would receive a written proposal for modification “subject
21 only to documentary verification of their income and assets.” *Id.* Plaintiffs allege that they
22 received this written proposal on April 14, 2009, which included the following terms: (1) Wells
23 Fargo would forgive accrued, outstanding non-capitalized interest through May 15, 2009; (2)
24 Plaintiffs’ loan balance would be reduced to \$573,505.23; (3) the interest rate on the loan would
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27 ³ It is unclear why the foreclosure sale was postponed six months until June 2011, and neither
28 party has sought judicial notice of a later notice of trustee’s sale. However, the parties do not
appear to dispute the propriety of the eventual sale.

1 decrease to 3.12%; and (4) Plaintiffs' monthly mortgage payment would fall from \$2,700 to
2 \$1,970. *Id.* ¶ 15. Plaintiffs allege that at some unspecified time thereafter, Plaintiffs contacted
3 Wells Fargo and a third unnamed loan modification representative instructed Plaintiffs to submit
4 documentation of their income and assets. *Id.* ¶ 16.

5 The SAC alleges that on April 28, 2009, Plaintiffs submitted a reduced payment of
6 \$1,971.11 to Wells Fargo. *Id.* ¶ 17. Plaintiffs submitted the "requested documentation" the
7 following day, on April 29, 2009. *Id.* ¶ 18.

8 Plaintiffs allege that over the ensuing months Plaintiffs submitted documentation of their
9 income and assets several times, and received inconsistent responses from Wells Fargo. On June
10 19, 2009, two months after they allegedly submitted the requested documentation for the first
11 time, Plaintiffs received a letter from Wells Fargo requesting that Plaintiffs resubmit the prior
12 documentation. *Id.* ¶ 18. On June 24, 2009, Plaintiffs received another letter from Wells Fargo
13 requesting the same documents. *Id.* ¶ 20. Plaintiffs allege that four months later Plaintiffs sent a
14 letter to Wells Fargo "explaining that they had submitted the requested documents on multiple
15 occasions, called Wells Fargo numerous times, and still had not heard anything about the
16 modification." *Id.* ¶ 21. Early the following year, on February 1, 2010, Plaintiffs submitted
17 "additional documents" to Wells Fargo. *Id.* ¶ 22. On March 31, 2010, Plaintiffs received a letter
18 from Wells Fargo stating that: "In order to move forward with modification process . . . You
19 must return all documents related to your current sources of income." *Id.* ¶ 23. Plaintiffs allege
20 that on the following day, April 1, 2010, Plaintiffs received a letter from Wells Fargo rejecting
21 Plaintiffs' application for a loan modification. *Id.* ¶ 24.

22 The SAC alleges that on May 17, 2010, Plaintiffs spoke to yet another unnamed Wells
23 Fargo representative who contradicted the rejection letter and told Plaintiffs that Plaintiffs were
24 still under consideration for a loan modification. *Id.* ¶ 25. According to Plaintiffs, Plaintiffs
25 submitted "additional documents" on May 25, June 21, and June 23, 2010. *Id.* ¶ 26. According to
26 Plaintiffs, Wells Fargo advised Plaintiffs on June 23, 2010 that all the documents Plaintiffs had
27 submitted until that point had been lost and would need to be resubmitted. *Id.* ¶ 27.

1 Six months later, on December 16, 2010, Plaintiffs received a letter from Wells Fargo
2 informing Plaintiffs that they were still under consideration for a modification. *Id.* ¶ 28. Plaintiffs
3 submitted “the documents” again on December 18, 2010. *Id.* ¶ 29. Wells Fargo informed Plaintiffs
4 by letter later that month on December 28, 2010 that Wells Fargo was still considering Plaintiffs’
5 application. *Id.* ¶ 30. On January 21, 2011, Plaintiffs received a second rejection letter, which
6 stated that Wells Fargo was “unable to offer [Plaintiffs] a mortgage assistance plan modification
7 because [of Plaintiffs’] excessive financial obligations.” *Id.* ¶ 31.

8 Plaintiffs sent yet another letter seeking a loan modification on February 9, 2011 and
9 received a response from Wells Fargo on February 24, 2011 stating that Plaintiffs were eligible for
10 a modification. *Id.* ¶¶ 32–33. Finally, on June 14, 2011, Plaintiffs received a third rejection letter
11 from Wells Fargo, which stated that Plaintiffs were ineligible for a modification because Plaintiffs
12 had failed to provide the requested documents. *Id.* ¶ 34. Plaintiffs sent another letter seeking a loan
13 modification a week later on June 21, 2011. *Id.* ¶ 35. On June 29 or 30, 2011, Wells Fargo
14 foreclosed on the property.⁴

15 Following the foreclosure, Plaintiffs sent Wells Fargo a letter stating that Plaintiffs had
16 sought to make mortgage payments several times “leading up to the notice of default” on
17 September 8, 2010, but that Plaintiffs were rebuffed because the payments “were less than the
18 total amount owed.” *Id.* ¶ 37. The letter also states that Plaintiffs’ expected 2013–2015 annuity
19 payments entitled them to the modification. *Id.*

20 The SAC alleges that on September 25, 2011, Plaintiffs were evicted from the property.
21 *Id.* ¶ 38. However, according to Wells Fargo, Plaintiffs remained in possession of the property
22 until at least mid-2012. *See* ECF No. 22-2, Ex. M (motion filed on March 23, 2012 by Wells Fargo
23 in Brandie Hannon’s bankruptcy proceeding for relief from automatic bankruptcy stay, indicating
24 that Plaintiffs were still in possession of the property and that Wells Fargo intended to institute
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27 ⁴ The SAC states that Wells Fargo foreclosed on June 29, 2011, *see* SAC ¶ 36, while the trustee’s
28 deed upon sale states that the property was sold at public auction on June 30, 2011, *see* ECF No.
22-1, Ex. I.

1 possession proceedings). Plaintiffs do not contest this assertion in their opposition, and it is
2 unclear when Plaintiffs relinquished possession of the property.

3 Based on these allegations, Plaintiffs bring four claims for relief against Wells Fargo: (1)
4 violation of California's UCL;⁵ (2) fraud; (3) breach of contract; and (4) breach of the implied
5 covenant of good faith and fair dealing. *Id.* ¶¶ 39–90.

6 3. Plaintiffs' Bankruptcy Petitions

7 Plaintiffs collectively filed four bankruptcy petitions in the Northern District of California
8 and received a series of automatic stays from any act to obtain possession of the property until the
9 time of dismissal or discharge of the bankruptcy proceedings.

10 Brandie Hannon filed a Chapter 7 bankruptcy on March 9, 2012. *See id.* In her filings, Ms.
11 Hannon acknowledged Wells Fargo was the owner of the property, but did not disclose any of the
12 instant claims in her petition, bankruptcy schedules, and statement of financial affairs. *See ECF*
13 No. 22-2, Ex. L. Wells Fargo filed a motion for relief from the automatic bankruptcy stay on
14 March 29, 2012 because Plaintiffs had not vacated the property, and possession proceedings
15 would be necessary. ECF No. 22-2, Ex. M. The Bankruptcy Court granted Wells Fargo's motion
16 on May 2, 2012. ECF No. 22-2, Ex. K, Dkt. No. 18. The Bankruptcy Court dismissed Brandie
17 Hannon's Chapter 7 case on May 10, 2012 because Ms. Hannon failed to file required tax returns.
18 ECF No. 22-2, Ex. M, Dkt. No. 20.

19 Edwin Hannon filed three Chapter 13 bankruptcies on May 21, 2012, June 11, 2012, and
20 August 22, 2012. *See ECF No. 22-2, Exs. N, O, P.* Mr. Hannon did not disclose his claims against
21 Wells Fargo in his three petitions, which were filed without bankruptcy schedules or statements of
22 financial affairs. *See ECF No. 22-2, Exs. Q, R and ECF No. 22-3, Ex. S.* The Bankruptcy Court
23 dismissed each of Mr. Hannon's cases in 2012 because Mr. Hannon failed to provide required
24 bankruptcy documents, including schedules of assets and liabilities and statements of financial
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26 ⁵ Although the SAC does not specifically cite California's Business and Professions Code, the first
27 cause of action is for "Violation of Unfair Competition Law," SAC at 9, and the parties discuss the
28 UCL in connection with this cause of action, *see Mot.* at 7, *Opp'n* at 7–10.

1 affairs. *See* ECF No. 22-2, Exs. N, O, P (docket printouts indicating debtor filed no bankruptcy
2 schedules or statements of financial affairs). Wells Fargo moved for relief from the automatic
3 bankruptcy stay in Mr. Hannon's second bankruptcy case, but the Bankruptcy Court dismissed the
4 case before ruling on the motion. ECF No. 22-2, Ex. O, at 7 (dropping hearing on motion for relief
5 from stay in light of August 20, 2012 dismissal).

6 **B. Procedural Background**

7 Plaintiffs filed their initial complaint in Monterey Superior Court on June 27, 2014. ECF
8 No. 22-1, Ex. J. Before serving the initial complaint, Plaintiffs filed a first amended complaint
9 ("FAC") on November 6, 2014. ECF No. 1, at 1-5. On December 8, 2014, Wells Fargo removed
10 the case to this Court. *Id.*

11 On January 5, 2015 Wells Fargo filed a motion under Federal Rule of Civil Procedure
12 12(b)(6) to dismiss the FAC on the grounds that Plaintiffs' claims in the FAC were barred by
13 judicial estoppel and the applicable statutes of limitations, and that the FAC failed to state a claim
14 for relief. ECF No. 11. Plaintiffs failed to oppose the motion. On March 16, 2015 the Court issued
15 an order to show cause why the case should not be dismissed for failure to prosecute. ECF No. 15.
16 After Plaintiffs filed a response and appeared at the hearing on the order to show cause, the Court
17 granted Wells Fargo's motion to dismiss without prejudice on March 30, 2015. ECF No. 19. In its
18 order, the Court warned Plaintiffs that "[f]ailure to meet the thirty-day deadline to file an amended
19 Complaint or failure to cure the deficiencies identified by Wells Fargo in its Motion to Dismiss
20 [would] result in a dismissal with prejudice of Plaintiffs' claims." *Id.* at 2. Plaintiffs filed their
21 SAC thirty-one days later, on April 30, 2015. ECF No. 20. Although the Court notes that Plaintiffs
22 failed to meet the thirty-day deadline set by the Court, the Court in its discretion declines to
23 dismiss the SAC on this basis.

24 On May 14, 2015, Wells Fargo moved to dismiss the SAC. ECF No. 21. Wells Fargo also
25 requests judicial notice of various documents relating to the property, the foreclosure, and
26 Plaintiffs' bankruptcy proceedings. ECF No. 22. Plaintiffs filed an opposition on June 5, 2015,
27 ECF No. 24, and Wells Fargo filed a reply on June 18, 2015, ECF No. 27.

II. LEGAL STANDARDS

A. Motion to Dismiss

A defendant may move under Federal Rule of Civil Procedure 12(b)(6) to dismiss an action for failure to allege “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal citations omitted). For purposes of ruling on a Rule 12(b)(6) motion, a court “accept[s] factual allegations in the complaint as true and construe[s] the pleadings in the light most favorable to the nonmoving party.” *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008).

Nonetheless, a court is not required to “assume the truth of legal conclusions merely because they are cast in the form of factual allegations.” *Fayer v. Vaughn*, 649 F.3d 1061, 1064 (9th Cir. 2011) (quoting *W. Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981)). Furthermore, “a plaintiff may plead [him]self out of court” if he “plead[s] facts which establish that he cannot prevail on his . . . claim.” *Weisbuch v. Cnty. of L.A.*, 119 F.3d 778, 783 n.1 (9th Cir. 1997) (quoting *Warzon v. Drew*, 60 F.3d 1234, 1239 (7th Cir. 1995)).

B. Leave to Amend

If the Court determines that the complaint should be dismissed, it must then decide whether to grant leave to amend. Under Rule 15(a) of the Federal Rules of Civil Procedure, leave to amend “should be freely granted when justice so requires,” bearing in mind “the underlying purpose of Rule 15 to facilitate decisions on the merits, rather than on the pleadings or technicalities.” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) (internal quotation marks and alterations omitted). When dismissing a complaint for failure to state a claim, “a district court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts.”

1 *Id.* at 1130 (quoting *Doe v. United States*, 58 F.3d 494, 497 (9th Cir. 1995)). Nonetheless, a court
2 “may exercise its discretion to deny leave to amend due to ‘undue delay, bad faith or dilatory
3 motive on part of the movant, repeated failure to cure deficiencies by amendments previously
4 allowed, undue prejudice to the opposing party . . . , [and] futility of amendment.’” *Carvalho v.*
5 *Equifax Info. Servs., LLC*, 629 F.3d 876, 892–93 (9th Cir. 2010) (alterations in original) (quoting
6 *Foman v. Davis*, 371 U.S. 178, 182 (1962)). If amendment would be futile, a dismissal may be
7 ordered with prejudice. *Dumas v. Kipp*, 90 F.3d 386, 393 (9th Cir. 1996).

8 **III. ANALYSIS**

9 The SAC alleges claims for: (1) violation of California’s UCL; (2) fraud; (3) breach of
10 contract; and (4) breach of the implied covenant of good faith and fair dealing. SAC ¶¶ 39–90.
11 Wells Fargo moves to dismiss the SAC on several grounds. First, Wells Fargo argues that
12 Plaintiffs are judicially estopped from pursuing their claims. Mot. at 4–6. Second, Wells Fargo
13 argues that Plaintiffs’ claims are time-barred. *Id.* at 6–9. Finally, Wells Fargo argues that for
14 several reasons the SAC fails to state actionable claims under the UCL, for fraud, or for breach of
15 contract or of the implied covenant of good faith and fair dealing. *Id.* at 9–16. As discussed below,
16 the Court finds that Plaintiffs are judicially estopped from pursuing their claims because Plaintiffs
17 failed to disclose these claims in their earlier bankruptcy proceedings. Thus, the Court need not
18 reach Wells Fargo’s remaining arguments.

19 Judicial estoppel is an equitable doctrine, invoked by a court at its discretion, which
20 precludes a party from gaining an advantage by asserting one position and subsequently taking a
21 clearly inconsistent position. *Hamilton v. State Farm Fire & Cas. Co.*, 270 F.3d 778, 782 (9th Cir.
22 2001); *Russell v. Rolfs*, 893 F.2d 1033, 1037 (9th Cir. 1990). The doctrine applies to prevent a
23 party from asserting inconsistent positions in different cases, as well as in a single litigation.
24 *Hamilton*, 270 F.3d at 783. The United States Supreme Court has identified three factors that
25 courts may consider in determining whether to apply the doctrine of judicial estoppel: (1) whether
26 a party’s position is “clearly inconsistent” with its earlier position; (2) whether the first court
27 accepted the party’s earlier position; and (3) whether the party seeking to assert an inconsistent
28

1 position would derive an unfair advantage if not estopped. *New Hampshire v. Maine*, 532 U.S.
2 742, 750–51 (2001). Generally, “[i]n addition to these factors, the Ninth Circuit examines
3 ‘whether the party to be estopped acted inadvertently or with any degree of intent.’” *Milton H.*
4 *Greene Archives, Inc. v. CMG Worldwide, Inc.*, 568 F. Supp. 2d 1152, 1164 (C.D. Cal. 2008)
5 (internal quotations marks omitted).

6 “In the bankruptcy context, a party is judicially estopped from asserting a cause of action
7 not raised in a reorganization plan or otherwise mentioned in the debtor’s schedules or disclosure
8 statements.” *Hamilton*, 270 F.3d at 783 (citing *Hay v. First Interstate Bank of Kalispell, N.A.*, 978
9 F.2d 555, 557 (9th Cir. 1992)). The application of judicial estoppel in the bankruptcy setting is
10 important “to protect the integrity of the bankruptcy process,” for “[t]he debtor, once he institutes
11 the bankruptcy process, disrupts the flow of commerce and obtains a stay and the benefits derived
12 by *listing all his assets*.” *Id.* at 785 (emphasis added). Further, the Bankruptcy Code subjects
13 debtors to a continuing duty to disclose all pending and potential claims. *See* 11 U.S.C. §
14 521(a)(1). “Judicial estoppel will be imposed when the debtor has knowledge of enough facts to
15 know that a potential cause of action exists during the pendency of the bankruptcy, but fails to
16 amend his schedules or disclosure statements to identify the cause of action as a contingent asset.”
17 *Id.* at 784. Finally, in the bankruptcy context courts generally “apply a presumption of deliberate
18 manipulation” and need not inquire into whether a plaintiff’s bankruptcy filing was inadvertent or
19 mistaken. *Ah Quin v. Cnty. of Kauai Dep’t of Transp.*, 733 F.3d 267, 271 (9th Cir. 2013). Only in
20 the limited circumstance where “the plaintiff-debtor reopens bankruptcy proceedings, corrects her
21 initial error, and allows the bankruptcy court to re-process the bankruptcy with the full and correct
22 information, [does] a presumption of deceit no longer comport[] with [the Supreme Court’s
23 holding in] *New Hampshire*.” *Id.* at 276.

24 Here, it is undisputed that the facts and events upon which Plaintiffs base their claims
25 occurred between January 8, 2009, when Plaintiffs contacted Wells Fargo about obtaining a loan
26 modification, and June 29 or 30, 2011, when Wells Fargo foreclosed on the property. SAC ¶¶ 14–
27 36. Thus, Plaintiffs had “knowledge of enough facts to know [of] a potential cause of action”

1 against Wells Fargo by the end of June 2011 at the latest. Despite Plaintiffs' knowledge of the
2 facts that they allege support their claims against Wells Fargo in mid-2011, none of Plaintiffs' four
3 bankruptcy petitions, filed between March and August 2012, disclosed any claims against Wells
4 Fargo, a fact that is also undisputed. *See SAC ¶ 10; see also Opp'n at 5.*

5 Weighing the factors that govern the application of judicial estoppel, the Court finds that
6 Plaintiffs are judicially estopped from pursuing their claims in this case. By failing to list claims
7 against Wells Fargo in their bankruptcy petitions, Plaintiffs have asserted "clearly inconsistent"
8 positions across cases. *See Hamilton*, 270 F.3d at 784 ("[Plaintiff] clearly asserted inconsistent
9 positions. He failed to list his claims against [defendant] as assets on his bankruptcy schedules,
10 and then later sued [defendant] on the same claims."). Further, the Bankruptcy Courts "accepted"
11 this position and granted the Plaintiffs the benefit of four automatic stays. *See id.* at 784–85 ("Our
12 holding does not imply that the bankruptcy court must actually discharge debts before the judicial
13 acceptance prong may be satisfied. The bankruptcy court may 'accept' the debtor's assertions by
14 relying on the debtor's nondisclosure of potential claims in many other ways [Plaintiff] did
15 enjoy the benefit of [] an automatic stay"); *see also Sharp v. Nationstar Mortgage, LLC*,
16 Case No. 14-0831, 2014 WL 4365116, at *5 (N.D. Cal. Sept. 3, 2014) (automatic bankruptcy stay
17 is sufficient to meet judicial acceptance prong); *Swendsen v. Ocwen Loan Servicing, LLC*, Case
18 No. 13-2082, 2014 WL 1155794, at *5 (E.D. Cal. Mar. 21, 2014) (same); *HPG Corp. v. Aurora*
19 *Loan Servs., LLC*, 436 B.R. 569, 578 (E.D. Cal 2010) (same).

20 As to unfair advantage, Plaintiffs' failure to disclose their claims against Wells Fargo
21 deceived the Bankruptcy Court and thus undermined the integrity of the bankruptcy process. *See*
22 *Hamilton*, 270 F.3d at 784–85. Plaintiffs' bankruptcy proceedings gave rise to automatic
23 bankruptcy stays under 11 U.S.C. § 362(a). *See, e.g.*, ECF No. 22-1, Ex. K at 3 (docket entry in
24 Brandie Hannon's bankruptcy proceeding indicating Wells Fargo's motion for relief from the
25 automatic bankruptcy stay entered by the Bankruptcy Court). "The law in this area is clear: a
26 plaintiff who has received the benefit of an automatic stay under 11 U.S.C. § 362(a) would receive
27 an unfair advantage by prosecuting claims against a defendant after failing to disclose those claims

1 in his bankruptcy proceedings.” *Swendsen*, 2014 WL 1155794, at *6.

2 Finally, while Plaintiffs contend that their failure to list their claims against Wells Fargo in
3 Plaintiffs’ various bankruptcy proceedings was inadvertent, *see* SAC ¶ 10, Plaintiffs do not allege
4 that they ever corrected filings in any of the four bankruptcy proceedings to include their claims
5 against Wells Fargo. Accordingly, the “presumption of deliberate manipulation” applies. *See Ah*
6 *Quin*, 733 F.3d at 273. Even were the Court to inquire as to Plaintiffs’ intent, the SAC does not
7 allege any *facts* that would indicate that Plaintiffs’ failure to disclose their claims against Wells
8 Fargo was the result of inadvertence or mistake. SAC ¶ 10. Moreover, Plaintiffs’ pro se status
9 before the bankruptcy court is insufficient to establish inadvertence or mistake. *Montgomery v.*
10 *Nat'l City Mortg.*, Case No. 12-1359, 2012 WL 1965601, at *7 (N.D. Cal. May 31, 2012) (A
11 plaintiff’s “pro se status in and of itself does not establish a mistake.”); *see also Sharp*, 2014 WL
12 4365116, at *6 (same). Nor does the Court find plausible Plaintiffs’ unsupported assertion that
13 their failure to list claims against Wells Fargo was inadvertent given that: (1) Plaintiffs
14 affirmatively allege that the purpose of their bankruptcies was to “stave off eviction” after the
15 foreclosure; and (2) Plaintiffs together filed four separate bankruptcy proceedings and failed to list
16 their claims against Wells Fargo in each case. *Id.* The Court therefore finds that Plaintiffs have
17 failed to overcome the presumption of deliberate manipulation and failed to show that judicial
18 estoppel should not apply because of inadvertence or mistake.

19 Plaintiffs’ other arguments against the application of judicial estoppel to this case are also
20 unavailing. First, Plaintiffs argue that because Edwin Hannon did not file a schedule of assets and
21 liabilities or statement of financial affairs in any of his three bankruptcies, he took no position
22 regarding his claims against Wells Fargo. Opp’n at 5. Plaintiffs conclude that as a result, the
23 Bankruptcy Court was not misled, Plaintiffs enjoyed no unfair advantage, and Plaintiffs have not
24 taken an inconsistent position by filing this action. *Id.* However, as Wells Fargo notes, Plaintiffs
25 cite no authority in support of the position that judicial estoppel should not apply where a plaintiff
26 files no schedule of assets and liabilities or statement of financial affairs rather than omitting
27 claims from actual filings. Nor do Plaintiffs explain why there should be a difference. In either

1 case, claims are not disclosed to the Bankruptcy Court, and the plaintiff receives the benefit of a
2 bankruptcy stay. *See Hamilton*, 270 F.3d at 785 (“The debtor, once he institutes the bankruptcy
3 process, disrupts the flow of commerce and obtains a stay and the benefits derived by *listing all*
4 *his assets.*”) (emphasis added). Where a plaintiff, as here, files a series of bankruptcy petitions and
5 fails to disclose potential claims, whether by omitting the claims from bankruptcy filings or by
6 simply failing to file required bankruptcy documents, judicial estoppel should apply to bar future
7 prosecution of undisclosed claims.

8 Second, Plaintiffs argue that while Brandie Hannon did file a schedule of assets and
9 liabilities in which she failed to list her claims against Wells Fargo, she held out hope that Wells
10 Fargo might somehow change course and roll back the completed foreclosure process and
11 trustee’s sale based on her appeal to Wells Fargo’s Office of Executive Complaints. Opp’n at 5.
12 However, this argument fails because at the time Ms. Hannon filed a bankruptcy petition, she had
13 potential claims against Wells Fargo. Plaintiffs’ claims arise out of Wells Fargo’s allegedly
14 fraudulent conduct in inducing Plaintiffs to default on their mortgage and rejecting their
15 application for a loan modification. At the point she filed her bankruptcy petition, Ms. Hannon
16 was aware of these allegedly fraudulent acts and the consequences, including the foreclosure and
17 Plaintiffs’ loss of their home. Ms. Hannon was under “an express, affirmative duty to disclose all
18 assets, *including contingent and unliquidated claims*” in her bankruptcy filing. *Hamilton*, 270 F.3d
19 at 785. Because Ms. Hannon failed to disclose these potential claims against Wells Fargo in her
20 bankruptcy filings, judicial estoppel applies. *Id.* at 784 (“Judicial estoppel will be imposed when
21 the debtor has knowledge of enough facts to know that a potential cause of action exists during the
22 pendency of the bankruptcy”); *see also Jones-Riley v. Hewlett Packard Co.*, Case No. 13-0125,
23 2015 WL 300703, at *3 (E.D. Cal. Jan. 22, 2015) (judicial estoppel barred claims not disclosed in
24 bankruptcy despite plaintiff’s assertions that she “never considered” disclosing the claims in her
25 bankruptcy filings because “she assigned no value to the claim[s] and hoped the disagreement
26 would resolve”); *Curry v. Wells Fargo Bank, N.A.*, Case No. 14-1311, 2014 WL 4375615, at *2
27 (E.D. Cal. Sept. 3, 2014) (plaintiff judicially estopped from asserting claims where “plaintiff had

1 knowledge of the facts and circumstances giving rise to his claims against defendant before
2 plaintiff filed his petition for bankruptcy"); *Montgomery*, 2012 WL 1965601, at *6 (finding
3 informal attempts to resolve dispute underlying claim "immaterial" to judicial estoppel analysis
4 because "[a] potential cause of action still existed").

5 Third, Plaintiffs contend that their failure to disclose claims against Wells Fargo in
6 Plaintiffs' bankruptcy proceedings provided them no unfair benefit, as the bankruptcies were
7 dismissed within weeks of filing and no debts were discharged. SAC ¶ 10. This argument fails
8 because "discharge of the debt is not a prerequisite to finding judicial estoppel." *Rabidou v.*
9 *Wachovia Corp.*, Case No. 14-03684, 2014 WL 7206700, at *3 (N.D. Cal. Dec. 18, 2014).
10 Plaintiffs obtained automatic bankruptcy stays, which prevented Wells Fargo from taking any
11 actions during the pendency of the bankruptcy proceedings to obtain possession of the property.
12 As discussed above, automatic bankruptcy stays constitute an unfair advantage and support the
13 application of judicial estoppel where a party seeks to prosecute previously undisclosed claims.
14 See *Sharp*, 2014 WL 4365116, at *6 (finding judicial estoppel applies even where plaintiff's
15 claims are dismissed and no debt is discharged); see also *Swendsen*, 2014 WL 1155794, at *6
16 (same).

17 Finally, Plaintiffs argue that Wells Fargo's reliance on *Sharp* and *Swendsen* is misplaced,
18 and seek to distinguish both cases. Plaintiffs first note that unlike here, the parties in *Sharp* and
19 *Swendsen* all filed schedules of assets and liabilities in their respective bankruptcy proceedings.
20 Opp'n at 5–6. However, as discussed above, the Court finds immaterial the fact that Edwin
21 Hannon's nondisclosure was the result of his failure to file a schedule of assets and liabilities or
22 statement of finances, rather than the result of an omission of the claims from filings. Plaintiffs
23 also point out that they did not bring this action until nearly two years after filing for bankruptcy,
24 in contrast to the plaintiffs in *Sharp* and *Swendsen*. *Id.* Plaintiffs argue that the courts in *Sharp* and
25 *Swendsen* relied on the short amount of time from filing for bankruptcy and prosecuting
26 undisclosed claims in concluding that the respective plaintiffs' failure to disclose claims in
27 Bankruptcy Court was not the result of inadvertence or mistake. *Id.* While this is true, and in

1 *Sharp* the plaintiff even filed her last bankruptcy petition after filing suit on the undisclosed
2 claims, *see* 2014 WL 4365116, at *5, it does not save Plaintiffs' claims here. As the Court
3 discussed above, the presumption of deliberate manipulation applies in this case, and Plaintiffs
4 have alleged no facts to rebut that presumption.

5 In sum, the Court finds that Plaintiffs failed to disclose the claims asserted in this case
6 against Wells Fargo in their four earlier bankruptcy proceedings. Having weighed the relevant
7 factors, the Court concludes in its discretion that Plaintiffs are judicially estopped from pursuing
8 such claims in this action.

9 **IV. CONCLUSION**

10 For the foregoing reasons, the Court GRANTS Wells Fargo's motion to dismiss. Plaintiffs
11 have failed to cure the deficiencies identified by Wells Fargo in its earlier motion to dismiss,
12 including the fact that Plaintiffs are judicially estopped from pursuing the claims in this action.
13 The Court previously warned Plaintiffs that failure to cure such deficiencies would result in a
14 dismissal with prejudice. ECF No. 19, at 2. Accordingly, the Court finds that further amendment
15 would be futile and denies leave to amend. *See Mujica v. AirScan Inc.*, 771 F.3d 580, 593 & n.8
16 (9th Cir. 2014); *Dumas*, 90 F.3d at 393. The Clerk shall close the case file.

17 **IT IS SO ORDERED.**

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19 Dated: August 13, 2015

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21 LUCY H. KOH
United States District Judge

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